

CITY OF MORGAN HILL
REGULAR REDEVELOPMENT AGENCY AND
SPECIAL CITY COUNCIL MEETING
MINUTES - JUNE 28, 2000

Mayor/Chairman Kennedy called the meeting to order at 7:02 p.m.

ROLL CALL

Present: Council/Agency Members Cook, Sellers, Tate and Mayor/Chairman Kennedy
Late: Council/Agency Member Chang (arrived at 7:06 p.m.)

DECLARATION OF POSTING OF AGENDA

City Clerk Torrez certified that the meeting's agenda was duly noticed and posted Per Government Code 54954.2.

PUBLIC COMMENT

Chairman/Mayor Kennedy opened the floor to public comment for items not appearing on the agenda. No comments were offered.

Redevelopment Agency Action

CONSENT CALENDAR:

Action: *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Cook, the City Council, on a 4-0 vote with Council Member Chang absent, approved Consent Calendar Item 1 as follows:*

1. MAY 2000 FINANCE AND INVESTMENT REPORT

Action: Accepted and Filed Report

Agency/Council Member Chang entered and was seated.

OTHER BUSINESS:

2. SUPPLEMENTAL LOAN TO SOUTH COUNTY HOUSING FOR VILLA CIOLINO

Director of Business Assistance and Housing Services Toy presented the staff report.

Chairman Kennedy noted that costs appear to be improvements that would not normally have been done. He requested a breakdown of the costs and the reason(s) for the increase.

Jan Lananthoul, South County Housing, stated that she recalled the Agency approving the original

loan for the project. She noted that Agency Member Tate supported the project but that he did not want the project TO return for additional funding. It was felt, at the time, that the project was estimated properly and that it was not expected to return to the Agency for additional funding. She apologized for having to return to the Agency Commission with a request for a supplemental loan. She said that at the same time when they were trying to value engineer the project, maintaining the architectural integrity, additional requirements were placed on South County Housing by public works department that were not originally anticipated. These requirements consist of changing the grade in Ciolino Avenue to improve the drainage, replacing the existing storm/sewer on the east and west side of the project along Ciolino Avenue, extending the Monterey Road median, installation of a new sanitary sewer line in Ciolino Avenue, installation of additional street lights, and the installation of separate fire service and domestic water lines (\$36,000). She noted that a number of these items were in the \$30,000-\$40,000 range and resulted in additional infrastructure improvement costs.

Agency Member Cook asked if the improvements are the responsibility of the developer? If they are not, she asked why the city is not picking up the cost? She asked why this project is not being treated the same as the El Toro project to be considered later this evening? She said that funding for the improvements can come from the 20% set aside and that she did not believe that South County Housing should bare the burden of the interest.

Mr. Toy responded that staff took the position that this was a project that the City had an opportunity to install the improvements that benefit the area and the project. Therefore, staff recommended that these improvements be required of the project and to request Agency approval of a supplemental loan to install the improvements at this time.

Interim Executive Director Tewes said that the subsequent El Toro agenda item addresses neighborhood infrastructure improvements which would have been the city's responsibility. In this case, there was no private development that would have triggered the review of the improvements necessary to service this project. The El Toro project is part of the City's responsibilities to bring the infrastructure up to standards. When the City has resources, the City installs the improvements. He noted that this project is triggered by a new development activity.

Agency Member Cook stated that if the Agency cannot establish a nexus for all of the improvements, she felt that the Agency should be working with South County Housing to make these improvements.

Mr. Tewes said that it was staff's assessment that a nexus exists and that the Agency has the opportunity to review them. In response to Vice-chairman Sellers' question, he said that the improvement costs would go up if the improvements were installed separately by a different contractor.

Agency Member Cook felt that the Agency could contract with the contractors with a reimbursement agreement for the Agency/City's share of improvements. If a nexus exists, she would not argue the point.

In response to Chairman Kennedy's inquiry, Mr. Tewes said that the impact of increasing the loan amount to South County Housing would not increase the rental or operational costs. He indicated that the loan is set as a residual receipt loan. The Agency will get paid back as revenues are made available. South County Housing is bound by tax credits to set rents at a certain level. Therefore, the rents are not impacted.

Chairman Kennedy stated his support of staff's position that a nexus exists. He noted that if this were a private development, the Agency/City would push to get as many of these improvements installed as possible. He felt that this is an overall project and that it would result in the need of infrastructures. Therefore a nexus exists without adversely impacting the rents or operating costs.

Vice-chairman Sellers stated that he understood that many of the improvements are broader than just the project appeal and that the improvements would improve the entire area. He asked if there was a chance that any of these improvements may be removed or redone with future development on other sites? Mr. Toy responded that it was his understanding that these improvements would remain.

Chairman Kennedy opened floor to public comment. No comments were offered.

Agency Member Tate stated that the initial intent of his e-mail to staff was to establish a conversation with Mr. Toy about the \$475,000 funding shortfall. He noted that this amount is less than the cost of an average home. However, he noted that this is almost a ½ million dollar cost. He encouraged staff to estimate the improvements into the original loan. He recommended that consideration be given to include extra contingencies for these types of housing projects. He stated that he did not want to see the Agency get into a position that every project that falls under the RDA is always over budget.

Action: *On a motion by Agency Member Chang and seconded by Vice-chairman Sellers, the Agency Commission unanimously (5-0): 1) **Approved** a Loan Commitment Increase of \$475,000 to South County Housing (SCH) for the Villa Ciolino Acquisition and Development Project; and 2) **Authorized** the Interim Executive Director to Modify the Villa Ciolino Permanent Loan Agreement by Increasing the Loan Amount from \$1.9 Million to \$2.375 Million.*

PUBLIC COMMENT

Action: *By consensus the Agency Commission/City Council **agreed** to reopen public comment.*

Geno Acevedo, on behalf of Independence Day Inc. (IDI), reminded the community about the festivities to be taking place on the Fourth of July. He indicated that a family festival will take place following the parade at Gavilan Park between the hours of 11:00 a.m. and 5:00 p.m. He stated that Council/Agency Members are scheduled to participate in the dunk tank.

Carol Holzgrafe distributed the Fourth of July 2000 Program which includes the following: Monday, July 3: Patriotic Sing to be held at 6:00 p.m. at Britton Middle School Gym and street dance to be held at the corner of Monterey & Second Street; Tuesday, July 4: 5,000 meter race to take place at 8:00 a.m.; Live Oak High School Emerald Regime to hold Pancake breakfast at P.A. Walsh; 10:00 a.m. parade will take place followed by the festival at Gavilan Park to be held from 11:00 a.m. to 5:00 p.m.; and that the fireworks display will take place at the Pumpkin Patch located in San Martin. She stated that IDI is grateful that the City of Morgan Hill is co-sponsoring this event.

Chairman/Mayor Kennedy noted that Thomas Kinkade will be the Grand Marshal of the parade.

3. COMMITMENT OF RDA 20% HOUSING SET ASIDE FUNDS TO SOUTH COUNTY HOUSING (SCH) FOR THE CHURCH STREET TRAILER PARK ACQUISITION AND DEVELOPMENT PROJECT

Director of Business Assistance and Housing Services Toy presented the staff report.

Agency Member Cook noted that option 3 is a requirement to clear the site and relocate the housing elsewhere in the city. She asked how the Agency can be using the 20% set aside funds for this option? Mr. Toy responded that if this is the option to be taken, the Agency would have to replace the housing funds used to acquire the property with non housing funds or to replace it with some other funding source besides housing funds. He indicated that it is not known which option will be used, therefore, housing funds can be used.

Chairman Kennedy noted that there is an option to acquire the adjacent undeveloped property. He noted that none of the fundings address this option. Mr. Toy stated that staff would have to work out an agreement with the adjacent property owner if the Agency decides to acquire a portion of the site. It would be that portion that would be used for residential purposes. He agreed that funding has not been identified for the purchase of additional sites but that housing funds can be used for land acquisition.

Chairman Kennedy opened the floor to public comment.

Jan Lananthoul, South County Housing, stated that she is looking forward in working with staff and the Agency Commission toward the redevelopment of the property. She said that South County Housing's approach would be to incorporate the adjacent vacant land. She said that housing would be located to the rear of the site. She said that it has been indicated by staff that retaining the commercial presence along Monterey Road is important. Therefore, there would be a parcel split with commercial development along Monterey Road with the balance of land being made available for the housing portion of the project. She indicted that South County Housing has not discussed the anticipated public improvements. However, discussion will be initiated early on in the process.

Chairman Kennedy said that it is his recollection that the General Plan Update Committee has

recommended that the downtown median be extended further south. He felt that this is another case where the Agency/City would want to incorporate improvements in the project in some manner. He was not sure if it was appropriate for this project to bare the burden of this cost or whether it was an infrastructure cost that the Redevelopment Agency accepts separately.

Agency Member Tate noted that with a lot split, you would have commercial property in the front. This being the case, he felt that South County Housing would be focusing on development to the rear (the Church Street side).

Chairman Kennedy asked if the property on Monterey Road is be sold as commercial? Ms. Lananthoul responded that it was her belief that the property would be retained by the party who currently has the property under contract.

Mr. Toy said that the cost for median installation still needs to be worked out. If you apportion the cost for installation based on street frontage, the commercial developer with frontage on Monterey Road would be responsible for the installation of the improvements.

Chairman Kennedy asked if all the costs should be included this evening or is it anticipated that additional costs would return to the Agency at a future date?

Agency Member Chang felt that there would be future costs that would need to be incorporated. She noted that the action before the Agency is a loan commitment as a bridge fall for South County to purchase the property and that this is not a full scale project. She felt that it was premature to discuss the details of development. The action is whether the Agency agrees to the concept.

Interim Executive Director Tewes said that when the Redevelopment Agency gets involved in these kinds of housing projects, it is not a typical conventional loan nor typical development process. Without Agency assistance, projects cannot be put together. He said that there are other major alternative concepts that are being developed. It is very likely that as the project evolves and the costs and opportunities become known, there may be additional commitments sought. Without Agency assistance at this preliminary stage, it is possible that the project would return for additional funding. He noted that the action before the Agency is endorsement of the project.

Agency Member Cook felt that of all the Agency projects anticipated and have been completed in the past, this is truly a redevelopment project as this is a very blighted area. She stated that she had no problems with the approval of the loan.

Agency Member Chang stated that she was pleased to see that South County Housing was overseeing this project and the Via Ciolino project as this is the true meaning of redevelopment. She thanked South County Housing for taking on these projects.

Vice-chairman Sellers concurred with the comments expressed by Agency Members Chang and

Cook. He said that he was pleased to see this project at this time because it can be reviewed as part of the general plan update. He felt that this is one of the most important projects that has been under taken by the Agency because it is located in the center of the town. He felt that housing projects need to be located at the center of the community and that it has to be a transit-oriented development. He was also pleased to see the integration of commercial development.

Chairman Kennedy agreed that South County Housing is doing a wonderful job of eliminating two blighted housing conditions in the community. These projects will help residents to obtain healthier, better living conditions while at the same time providing residents with quality housing. He thanked South County Housing for coming forward and taking on these projects as they will benefit the community.

No other comments were offered.

Action: *On a motion by Agency Member Cook and seconded by Agency Member Tate, the Agency Commission unanimously (5-0): 1) **Adopted** Resolution No. MHRA - 218 Approving a Loan Commitment of Up to \$1.35 Million to South County Housing (SCH) for the Acquisition of Church Street Trailer Park Site and the Adjacent Fourplex Property, correcting the typos found on the first page of the Resolution (replace the word Such with SCH) and 2) **Authorized** the Interim Executive Director to Negotiate, Prepare and Execute the Loan Agreement and Related Documents with SCH in an Amount Not to Exceed the \$1.35 Million.*

Redevelopment Agency and City Council Action

CONSENT CALENDAR:

Agency/Council Members Sellers (resides on El Toro Avenue) and Chang (project within 300 feet of her office building) stepped down from Agenda Item 4 due to a conflict of interest.

Agency/Council Member Tate requested that Item 4 be pulled from the Consent Calendar.

4. **AWARD OF CONTRACT FOR EL TORO AVENUE STREET AND UTILITY REPLACEMENT PROJECT**

Director of Public Works Ashcraft presented the staff report.

Chairman/Mayor Kennedy felt that it would be good to have a prioritization list of these kinds of projects, including street replacements. He noted that there were many streets that are similar in condition to this one in the older part of the City, particularly in the downtown area. He felt that work could be avoided being done on a piecemeal bases or awaiting for the sewer or water system priority list to drive the work. He felt that the City should look at all of the infrastructures (e.g. street, curbs,

gutter, sewer and water systems) and list the parts of the downtown that are in need of improvements on a priority basis rather than reacting.

Mr. Ashcraft informed the City Council that a priority list exists for every street segments in town. He said that El Toro ranked in the worst five street segments in the community. It was located at the bottom of the priority list but was moved to the top of the list based on the replacement of utilities. He said that staff would provide the City Council with a priority list.

Chairman/Kennedy felt that if the lists were combined, it may move some areas closer to the top of the priority list.

Agency Member/Mayor Pro Tempore Tate agreed with Mayor Kennedy's comments. He stated that he focused on the priority list because he felt that the City did a great job of prioritizing the streets. He reviewed the CIP last night and found a grouping of projects in the CIP such as the Warren-Nob Hill area (\$350,000) and El Toro-Lindo Lane (\$210,000). Staff is requesting \$513,000 where it was estimated that the work for El Toro-Lindo Lane could be done for \$210,000. He asked how the Agency/Council can tell residents who live in areas in high priority where their priority lies, especially when this project is coming in at 2.5 to 3 times higher than was originally indicated. He expressed concern that projects are coming in much higher than what has been identified in the capital plans.

Mr. Ashcraft indicated that the original plans for this project three to four years ago was for the El Toro water and sewer project. Funds were identified from the water and sewer replacement funds. He said that last year, the city took a wastewater replacement project before the City Council. At the acceptance phase, staff requested that the Council consider projects within the Redevelopment project area with inferior infrastructures be funded by Redevelopment funds. He said that alternatively, a portion of the funding can come from water and sewer replacement funds. He said that the RDA plan amendment identifies substantial amount of funds to be spent on utilities, infrastructure and reconstruction to benefit the project area. Staff felt that there are a variety of funding sources that can be used for this project. He said that staff will provide the Council/Agency with a list containing recommended priorities. He informed the City Council/Agency Commission that staff proposes to complete one project a year due to the magnitude of staff time to put the projects together. He indicated that this is not a good project for a consultant because it takes a lot of involvement with each individual resident to address their desire and explain the results of the construction project.

Chairman/Mayor Kennedy expressed concern that if the City is resource constrained and causing the delay of much needed projects. He felt that there was a way to fix this with the use of temporary resources to speed up the process.

Interim Executive Director/City Manager informed the Agency Commission/City Council that the city is resource constrained both in terms of staff time and funding sources. When staff returns with the priority list, staff will explain how it fits in within the Five Year Capital Improvement Programs recently adopted by the City Council. Should the Council wish to make reallocations, the Council

will have the opportunity to do so upon review of the list.

Agency Member/Mayor Pro Tempore Tate inquired about the Redevelopment Housing Set-aside funding. He noted that when the Cosmo/Monterey traffic signal was installed, the City had to establish the moderate income level for the residents in the area. In reading the staff report, he could not find that the City conducted the income levels for this area.

Mr. Toy said that staff looked at the census tract data to show that the area was predominantly a low-moderate income neighborhood. Staff is taking the information based on the Agency's paint and clean up program. He said that staff has a good feel for what the neighborhood's income levels are. He stated that a similar process was prepared for this project as was conducted for the Cosmo signal light project.

Chairman/Mayor Kennedy opened the floor to public comment. No comments were offered.

Action: *On a motion by Agency/Council Member Cook and seconded by Agency Member/Mayor Pro Tempore Tate, the Agency Commission/City Council, on a 3-0 vote with Agency/Council Member Chang and Vice-chairman/Council Member Sellers absent, **Made findings** of benefit for use of RDA 20% set-aside funds by the following: 1) **Adopted** Resolution MHRA-220 Approving Payment by the Agency for All or a Part of the Cost of Improvements to El Toro Avenue; 2) **Adopted** Resolution No. MHRA-221 Approving Payment for the Design and Construction of New Utility Improvements for El Toro Avenue; 3) **Adopted** Resolution No. MHRA-222 Approving Payment by the Morgan Hill Redevelopment Agency for All or a Part of the Cost of Improvements to El Toro Avenue; 4) **Appropriated** \$243,512 from the Current Year Appropriated RDA Non-housing Fund Balance to Complete Funding for This Project, and 5) **Awarded** Contract to Trinchero Construction Company, Inc. for the Construction of El Toro Avenue Street and Utility Replacement Project in the Amount of \$473,598.*

Agency/Council Members Chang and Sellers resumed their seats on the dias.

PUBLIC HEARINGS:

5. AUTHORIZING THE REDEVELOPMENT AGENCY TO PAY FOR THE DEVELOPMENT AND CONSTRUCTION OF THE COMMUNITY CENTER PROJECT

Director of Business Assistance and Housing Services Toy presented the staff report.

Agency/Council Member Cook indicated that the Agency already paid for the land. Mr. Toy clarified that the Agency paid for the land. However, the Agency is at a point where there is an approved

project and that findings need to be made to verify or to confirm that the Agency is paying for the land for the community center. He indicated that findings were not included at the time that the Agency took action to acquire the property because it was not known exactly what the property would be used for.

Agency/Council Member Cook asked if by the adoption of Resolution No. 219 (page 5, Section 6) if the Agency is contracting with the City for a loan to build the community center? Mr. Toy indicated that this loan would provide the option for the City to make a loan to the Redevelopment Agency for the construction of the community center. This loan would be paid back.

Interim Executive Director/City Manager Tewes clarified that Section 6 of Resolution No. 219 does not constitute a loan agreement between the City and the Agency. The resolution provides that in the event that any monies paid by the city for the value of land, it can constitute an indebtedness. He noted that this will be similar in action of what the Agency will see in the next few months with other projects. Redevelopment Law requires that when redevelopment funds are to be used for a public building, a public hearing must be held and that certain findings be made.

Chairman/Mayor Kennedy opened the public hearing. No input being offered, the public hearing was closed.

Action: *On a motion by Agency/Council Member Chang and seconded by Agency Member/Mayor Pro Tempore Tate, the Agency Commission/City Council unanimously (5-0) **Adopted** Resolution No. MHRA - 219 Approving the Payment by the Agency of All or a Part of the Value of the Land for and the Cost of the Installation and Construction of a Community Center Facility and Related Improvement in the Ojo de Agua Community Development Project Area.*

Action: *On a motion by Agency/Council Member Chang and seconded by Agency Member/Mayor Pro Tempore Tate, the Agency Commission/City Council unanimously (5-0) **Adopted** Resolution No. 5411 Approving the Payment by the Morgan Hill Redevelopment Agency of All or a Part of the Value of the Land for and the Cost of the Installation and Construction of a Community Center Facility and Related Improvements in the Ojo de Agua Community Development Project Area.*

Agency/Council Member Cook noted that a dollar value (appropriation) was not included in the resolutions and recommended that it be incorporated in the resolutions.

Interim Executive Director/City Manager informed the Agency Commission/City Council that it approved the funding when it adopted the budget.

Interim Agency Counsel/City Attorney Leichter advised the Agency/Commission that staff can add a recital clause to the resolution that would reference the fact that the Agency Commission/City

Council made the budget appropriation, including the dollar figure.

Action: *On a motion by Agency/Council Member Chang and seconded by Agency Member/Mayor Pro Tempore Tate **agreed to modify the motion** to include a recital clause to the resolution that would reference the fact that the Agency Commission/City Council made the budget appropriation, including the budgeted dollar amount. The motion carried unanimously (5-0).*

6. DISPOSITION AND OFFSITE DEVELOPMENT AGREEMENT WITH LLAGAS VALLEY INVESTORS FOR THE RELOCATION AND REHABILITATION OF THE OLD MORGAN HILL ELEMENTARY SCHOOL BUILDING

Director of Business Assistance and Housing Services Toy presented the staff report. He informed the Agency Commission/City Council that comments were received from the applicant's attorney late this afternoon and thus the recommendation for a continuance to July 12, 2000. He stated that staff is not making a recommendation regarding the attorney's comments as they still need to be evaluated and negotiated by staff. He noted two significant issues as follows: 1) Developer would like the flexibility to lease the school building to another tenant beside Carden Academy for the same use should Carden Academy back out of its agreement to lease and 2) it is being requested that the Agency share 50% of the cost to abate and dispose hazardous material as required by law that they may occur when the building is cut open and moved. Staff is hopeful that negotiations would be completed with the development agreement next week and that it would be helpful to hear the Agency Commission's comments on these two issues that have been raised by the developer. He informed the Agency Commission/City Council that abatement and containment of led and asbestos has occurred within the building. The developer has expressed concern that when the building is cut into sections, that there may be some abatement that may have to be done based upon cutting into the building. Once the building is sealed, containment would result.

Chairman/Mayor Kennedy opened the public hearing.

Chairman/Mayor Kennedy inquired as to the cost of the abatement? Gloria Pariseau responded that it is has been estimated that it would cost \$35,000-\$40,000 to abate asbestos in the roof. There may be some requirement in state law to use special equipment or a special asbestos abatement company. It is at this point that it will be encapsulated. When the building is opened, it is believed that some of the led will be flaky and may become contaminate and pliable. Therefore, special equipment and special material will have to be used to deal with these areas when the building is opened. Once the building is opened, moved and put back together, the building would be encapsulated.

Agency/Council Member Chang asked staff if it felt that the development agreement would be acceptable to both parties by July 12? Mr. Toy responded that he was optimistic that the development agreement would be completed by July 12.

Gloria Pariseau stated that it is hoped to move the building off of the Dunne and Monterey site within the next 10 to 12 weeks. She explained the process that would need to be followed to achieve the move.

No other comments were offered.

Action: *On a motion by Agency/Mayor Pro Tempore Tate and seconded by Vice-chairman/Council Member Sellers, the Agency Commission/City Council unanimously (5-0) **Continued** the Public Hearing to July 12, 2000.*

Agency Member/Mayor Pro Tempore Tate noted that there were some Agency Members concerned with the amount of money being committed to this project. As a result, he did not vote to approve the project at that time. He indicated that he supported saving the school building if there is a way to do it within an affordable cost. He felt that the cost was already out of line in terms of affordability. Additional costs would result in the same concern.

Vice-chairman/Council Member Sellers felt that if the developer could find another tenant that is within the specific parameters, upholds the original use for the facility and allows for the continued use by the public, he would not see a problem with identifying a specific tenant. He hopes that the abatement situation would not be a cost issue to the extent that it is. He did not believe that it was unreasonable to expect that there would be some additional abatement requirement. He was glad to see that the amount would not exceed \$20,000 as an Agency/City commitment.

Chairman/Mayor Kennedy stated his support of this project and that he was glad to see that a contractor's estimate was sought. He said that he would like to keep the project moving ahead for the salvaging and reuse of the Morgan Hill School building and to proceed with the community center project.

City Council Action

CONSENT CALENDAR:

Action: *On a motion by Council Member Sellers and seconded by Mayor Pro Tempore Tate, the City Council unanimously (5-0) **approved** Consent Calendar Items 7-9 as follows:*

7. AWARD OF CONTRACT FOR POLYBUTYLENE WATER SERVICE REPLACEMENT PROJECT, PHASE II

Action: **Awarded** *Contract to Monterey Peninsula Engineering for the Construction of Polybutylene Water Service Replacement Project, Phase II in the Amount of \$314,600.*

8. FINAL MAP ACCEPTANCE FOR MADRONE CROSSING PH. I (TRACT 9234)

***Action:** 1) Approved the Final Map, Subdivision Agreement and Improvement Plans; 2) Authorized the Interim City Manager to Sign the Subdivision Improvement Agreement on Behalf of the City; and 3) Authorized the Recordation of the Map and the Subdivision Improvement Agreement Following Recordation of the Development Improvement Agreement.*

9. APPROVAL OF SUPPLEMENTAL IMPROVEMENT AGREEMENT WITH SHEA HOMES/GLENROCK BUILDERS - TRACT 9234

***Action:** Approved the Supplemental Improvement Agreement for Relocation of Sewer Lift Station "I" by Shea Homes & Glenrock Builders at Madrone Crossing (Tract 9234) and Authorize the Interim City Manager to Execute the Agreement on Behalf of the City.*

OTHER BUSINESS:

10. AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL ENACTING SECTION 12.20.095 (USE OF THE SKATE PARK FACILITY) OF CHAPTER 12.20 (CITY PARKS AND RECREATION BUILDINGS) OF TITLE 12 (STREETS, SIDEWALKS AND PUBLIC PLACES) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL REGULATING USE OF THE SKATE PARK FACILITY

Recreation Manager Spier presented the staff report.

Council Member Cook inquired as to the hours of operation as listed under Section 12.20.095B.1. Ms. Spier informed the City Council that staff reviewed the City of Fremont's use hours. It was suggested that once you open the skate board park, skaters tend to form a rule of thumb when the park would be used. Without any history in this community, it was suggested that the hours of operation be 8:00 a.m. to 9:00 p.m. She said that this would be the maximum time limit and that staff could work from these hours. If it becomes an issue, staff could reduce the number of hours.

Council Member Cook asked if language should be added to this effect in the ordinance so that it does not have to return to the City Council? She asked if some discretion should be written into this section?

Interim City Attorney Leichter said that there are certain items contained in the ordinance that would give the police department enforcement mechanism. This is the reason for the recommended definitive closing time. The Council could add language that would give staff discretion to close the park earlier. This action would be appropriate as long as the closing time is posted. She noted that staff included an exception that staff can close the facility due to rain but that staff did not include flexibility in terms of general closing hours. She stated that the use of the facility in the dark without lights could result in a liability.

Mayor Pro Tempore Tate said that if darkness is a concern that the city would want to do something to address this concern. Ms. Spier said that winter hours and summer hours can be identified.

Council Member Cook stated that she would support discretionary hours.

Mayor Kennedy recommended that it be stated that winter and summer hours will be established by staff.

Council Member Chang inquired if the ordinance requires insurance for the use of the facility? Ms. Spier responded that the use of the facility would be at one's own risk. Staff would need to have a release of liability if the city was supervising the facility. She said that the facility would be fenced due to an agreement with VTA. Once the gate is unlocked, it would be an unsupervised facility and that extensive signage would be installed in the park.

Mayor Kennedy opened floor to public comment. No comments were offered.

Mayor Kennedy stated that he was pleased to see that this project moving forward as it is a much needed facility for the youth of the community and individuals who like to skate.

Interim City Manager Leichter recommended that the ordinance be amended to indicate that winter hours are to be at the discretion of staff.

Action: *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Waived** the Reading in Full of Ordinance No. 1484, N.S. Enacting Section 12.20.095, Regulating Use of the Skate Park Facility.*

Action: *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Chang, the City Council **introduced** Ordinance No. 1484, New Series, by Title Only as follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL ENACTING SECTION 12.20.095 (USE OF SKATE PARK FACILITY) OF CHAPTER 12.20 (CITY PARKS AND RECREATION BUILDINGS) OF TITLE 12 (STREETS, SIDEWALKS AND PUBLIC PLACES) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL REGULATING USE OF THE SKATE PARK FACILITY, amending Section 12.20.095B.1. to stipulate that the winter hours of operation are to be established by staff, by the following roll call vote: AYES: Chang, Cook, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.*

11. PRESENTATION ON BECOMING A MUNICIPAL UTILITY BY COMPETISYS

Mayor Kennedy stated that he heard the presentation by Competisys at a Cities Association meeting. He found the presentation to be interesting and felt that there may be some potential for the city to

look into, specifically two major areas: power and telecommunication.

Environmental Programs Manager Eulo informed the City Council that Dan Baker, Vice-president for marketing, Competisys, was present to address the City Council relating to a community-based power and communications operation.

Mr. Baker made a presentation on a community based power and communications strategy now that deregulation is occurring in various parts of the utility world. He addressed finding ways to participate and new sources of revenues from deregulation. He addressed a community-based power and communication strategy. He sees this to be different from a vertically integrated utilities system. He said that there are opportunities to have other participants in utility services. He informed the Commission that Competisys is putting together a program that installs competitive distribution systems for power (electricity and gas) and for communications. In areas of growth in a city or county, one can create a new utility distribution system operated and owned by the City through an out service with a firm and continue to have the existing utility systems served by the existing utilities in the areas that they currently serve. This allows a city and the community to benefit as well as individuals who live in the new community to benefit, including developers of a new development.

Mayor Pro Tempore Tate asked if this program can be used in older neighborhoods? Mr. Baker said that it would not be cost effective to retrofit an older neighborhood except in the communication side.

Council Member Cook noted that approximately 250 homes can be built in the community and that a lot of it is infill development. Development is not taking broad sections such as building out Coyote or Almaden Valley where numerous homes are being built. She asked what would be the minimum size of a project that would make this program feasible?

Mr. Baker responded that this process would be more attractive to a new development of approximately 500 homes to be built over a period of time or new commercial/industrial development to be served by the same utility system. In response to Mayor Kennedy's question, he indicated that a 100-acre industrial park in a design stage should look at this concept. He said that the City would ask someone like Competisys to put together a proposal based on the schematic plans and return to the City on how and if it would make sense to get involved in such a program. When you combine the electric new construction in both residential and commercial and the over build of the community with broad banned communication, it starts to get attractive because the city can participate in the revenues from the broad band over build not just the new components of the new housing being built. He stated that Competisys would put together the documentation for developing the utility district, finance its formation and management it for the city. Competisys would receive competitive bids for all the services to be provided under the utility district. He felt that the telecommunication portion of the program is important to cities. It is expected that the power revenues would be four times higher than the city would not otherwise have.

Council Member Sellers requested a presentation on the options of the communication element as it relates to existing housing. He noted that approximately 75-80% of Morgan Hill residents travel to the north to high tech jobs and felt that it would be a benefit to these individuals to work at home with telecommunication. It is also being seen that home based businesses are emerging to avoid commuting. He felt that the performance of the wireless delivery system would be a fraction of what the wired system would be.

Mr. Baker said that wireless systems are still subject to atmospheric issues as well as a variety of issues. The ability to have the band width that fibers should have is still not there. There are systems that are being tested that are laser point to point that are big broad band systems. These are only expected to be used in urban areas, building to building and not likely to be seen in residential areas. The system proposed for Cisco can be deployed but that it is point to multi point.

Mayor Kennedy inquired as to the first step to be taken should the City be interested in pursuing either the power or telecommunication program? Mr. Baker recommended that his office be given a call to schedule a meeting to see if there are opportunities and to quantify the opportunity. Numbers would be reviewed to see if there are enough to make it worth while for the city to get involved. He said that his office can perform a preliminary analysis for the city.

Mayor Kennedy asked if this program was something that the City Council would like staff to explore?

Mayor Pro Tempore Tate felt that there would be an opportunity to explore the feasibility of this program with the business park.

Council Member Sellers said that another option would be that instead of the City realizing the benefit, that the rates be lowered throughout the community versus having some individuals pay a higher rate than others. He felt that staff can explore other options.

Council Member Cook asked why the city should be satisfied with four times the amount of revenue that the City currently gets as it was her belief that this is a valuable commodity. She asked if there were other companies who could provide competitive proposals.

Mr. Baker clarified that the four times revenues was only for the electric. He did not mention the revenues coming in from the phone system and the broad band system. These were in excess of the electric revenue income. He agreed that the City Council should look at other alternative companies besides Competisys.

Mr. Tewes stated that staff would agree to pursue planning efforts for a smart community and taking advantage of the convergence of all these technologies versus taking piecemeal projects and evaluating them. He agreed that this is a highly competitive business and that there are a lot of

individuals who would be interested.

Council Member Cook recommended starting out with the concept as described by the Interim City Manager. She recommended that it be looked at and that some of the goals for the community be defined. She noted that there are old portions of the community and that there are new portions that are being developed. She recommended that a strategy be studied and implemented versus jumping right in.

Mr. Tewes said that staff would need to evaluate if the window period has closed for the new business park and report back to the City Council.

Council Member Sellers agreed that the focus should be on the community's needs and where the city wants to go with this rather than what is out. He recommended that modest steps be taken based on the city's needs and try to define them.

Action: *It was the consensus of the City Council to **direct** staff to work on this issue with respect to the new business park and that staff investigate other service providers.*

OPPORTUNITY FOR PUBLIC COMMENT

CLOSED SESSION:

Interim City Attorney Leichter announced the following closed session items:

1.

CONFERENCE WITH LEGAL COUNSEL - POTENTIAL LITIGATION

Legal Authority:	Government Code 54956.8 & 54956.9(c) (1 potential case)
Real Property(ies) involved:	APN 728-31-007 & 008; 25.50 acres located on the southwesterly side of Mission View and Cochrane Road; and APN 728-31-009 - 12.88 acres located on the southeast corner of Cochrane and Highway 101 (St. Louise Hospital property)
City Negotiators:	Agency Members; Interim Executive Director; Interim Agency Counsel; and F. Gale Conner, special counsel
Closed Session Topic:	Potential Litigation

2.

PUBLIC EMPLOYMENT

Legal Authority:	Government Code Section 54957
Position:	City Manager Recruitment

OPPORTUNITY FOR PUBLIC COMMENT

Mayor/Chairman Kennedy opened the closed session items to public comment. No comments were offered.

ADJOURN TO CLOSED SESSION

Mayor/Chairman Kennedy adjourned the meeting to closed session at 9:23 p.m.

RECONVENE

Mayor/Chairman Kennedy reconvened the meeting at 10:12 p.m.

CLOSED SESSION ANNOUNCEMENTS

Mayor/Chairman Kennedy announced that no reportable action was taken on Closed Session Item 1. Regarding Closed Session Item 2, on a motion by Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) agreed to appoint J. Edward Tewes as City Manager.

FUTURE COUNCIL-INITIATED AGENDA ITEMS:

No items were noted.

ADJOURNMENT:

There being no further business, Mayor/Chairman Kennedy adjourned the meeting at 10:16 p.m.

MINUTES RECORDED AND PREPARED BY:

IRMA TORREZ, City Clerk/Agency Secretary